

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgo	Team: Squad #04	CCRB Case #: 202200388	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/19/2021 9:37 PM	Location of Incident: 2nd Avenue and East 120th Street	18 Mo. SOL 4/19/2023	Precinct: 25		
Date/Time CV Reported Tue, 01/18/2022 3:33 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/18/2022 3:33 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Nicholas Mcquail	24018	963347	INT FIO PRG
2. SGT Darwin Marrero	03774	946693	INT FIO PRG
3. DT3 Jonathan Trahan	03627	955590	INT FIO PRG

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Joseph Franzitta	16273	961769	025 PCT
2. PO Robert Renz	10375	961158	025 PCT
3. CPT Christian Hernandez	00000	928473	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Nicholas Mcquail	Abuse: Police Officer Nicholas Mcquail stopped an individual.	
B . SGT Darwin Marrero	Abuse: Sergeant Darwin Marrero stopped an individual.	
C . PO Nicholas Mcquail	Abuse: Police Officer Nicholas Mcquail frisked an individual.	
D . SGT Darwin Marrero	Abuse: Sergeant Darwin Marrero searched the vehicle in which an individual was an occupant.	
E . DT3 Jonathan Trahan	Abuse: Detective Jonathan Trahan strip-searched § 87(2)(b)	
F . DT3 Jonathan Trahan	Discourtesy: Detective Jonathan Trahan spoke discourteously to § 87(2)(b)	
G . DT3 Jonathan Trahan	Abuse: Detective Jonathan Trahan searched the vehicle in which § 87(2)(b) was an occupant.	
H . SGT Darwin Marrero	Abuse: Sergeant Darwin Marrero searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On January 18, 2022, § 87(2)(b) filed this complaint with the CCRB via telephone.

On October 19, 2021, at approximately 8:45 PM, officers executed a no-knock search warrant at § 87(2)(b) apartment at § 87(2)(b) in Manhattan § 87(2)(b).

On the same day and following the execution of the search warrant, at approximately 9:37 PM, at the intersection of East 120th Street and 2nd Avenue in Manhattan, Police Officer Joseph Franzitta and Police Officer Robert Renz of the 25th Precinct apprehended § 87(2)(b). Police Officer Nicholas McQuail, Sergeant Darwin Marrero, and Detective Jonathan Trahan of the 25th Precinct Field Intelligence Office arrived afterwards. Police Officer McQuail and Sergeant Marrero stopped an unidentified individual who was nearby (**Allegation A: Abuse of Authority – Stop – § 87(2)(g)** and **Allegation B: Abuse of Authority – Stop – § 87(2)(g)**). Police Officer McQuail frisked the individual (**Allegation C: Abuse of Authority – Frisk – § 87(2)(g)**) and Sergeant Marrero searched the individual's moped and (**Allegation D: Abuse of Authority – Vehicle Search – § 87(2)(g)**). Detective Trahan pulled § 87(2)(b) undergarment's waistband out enough to look down, making § 87(2)(b) genitals visible (**Allegation E: Abuse of Authority – Strip Search – § 87(2)(g)**). Detective Trahan said, "Why the fuck you lying? I tried treating you like a man; you think I don't know what I'm looking for?" (**Allegation F: Discourtesy – Word – § 87(2)(g)**). Detective Trahan searched § 87(2)(b) vehicle in the presence of Sergeant Marrero, and Sergeant Marrero did not intercede (**Allegation G: Abuse of Authority – Vehicle Search – § 87(2)(g)** and **Allegation H: Abuse of Authority – Vehicle Search – § 87(2)(g)**).

§ 87(2)(b) was arrested for criminal possession of a controlled substance in the third degree, criminal possession of a weapon in the third degree, criminal possession of a controlled substance in the fifth degree, and criminal possession of a controlled substance in the seventh degree (Board Review 01).

Body-worn camera (BWC) footage from the cameras of Police Officer Franzitta, Police Officer Renz, Sergeant Marrero, Detective Trahan, Police Officer McQuail, and (of the 25th Precinct) Police Officer Yanuel Gutierrez, Police Officer Travis Jordan, Police Officer Kevin Altamirano, Police Officer Kyle Kelly, Sergeant Norman Ortega, and Police Officer David Ortiz is linked to Board Reviews 02-12 and summarized in Board Reviews 13-14.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Nicholas Mcquail stopped an individual.
Allegation (B) Abuse of Authority: Sergeant Darwin Marrero stopped an individual
Allegation (C) Abuse of Authority: Police Officer Nicholas Mcquail frisked an individual.
Allegation (D) Abuse of Authority: Sergeant Darwin Marrero searched the vehicle in which an individual was an occupant.

§ 87(2)(b) was interviewed by the CCRB via telephone on January 18, 2022 (Board Review 15). Detective Trahan was interviewed at the CCRB on November 7, 2022 (Board Review 16). Police Officer McQuail was interviewed at the CCRB on February 3, 2023 (Board Review 17). Sergeant Marrero was interviewed at the CCRB on February 10, 2023 (Board Review 18).

It is undisputed that officers executed no-knock search warrant (Warrant § 87(2)(b) at § 87(2)(b) apartment, on the same day, for drugs and paraphernalia including heroin, cocaine, vials,

caps, glassine envelopes, and firearms. DD5s (Board Review 19, page 22) further list, “quantity of crack cocaine, heroin, suboxone, cocaine, unknown powdery substance, unknown pill, paraphernalia.” Seized from the apartment were one glassine of heroin, one bottle of cocaine, 23 suboxone packs, and a bag of unknown blue powder. These items were recovered in a bedroom and on § 87(2)(b) person. Police Officer McQuail’s memo book (Board Review 34) notes that a quantity of an unspecified controlled substance and the “subject’s” ID were in the same bedroom.

Police Officer McQuail, § 87(2)(b) arresting officer, stated that following the search warrant execution (Board Review 19), he conferred with ADA § 87(2)(b) of the Special Narcotics Prosecutor, who stated that officers had probable cause to arrest § 87(2)(b) as long as he was within a “reasonable distance” from the apartment, given the search warrant and officers’ recovery of narcotics and § 87(2)(b) identification in the apartment.

It is undisputed that an unidentified individual was on the sidewalk approximately 15 feet from § 87(2)(b) when officers arrived to apprehend § 87(2)(b). It is undisputed that, after officers handcuffed § 87(2)(b) this individual drove down the sidewalk on his moped and then officers stopped him. It is undisputed that the individual told officers that they could search him and that Police Officer McQuail then frisked him. It is also undisputed that Sergeant Marrero searched the individual’s moped vehicle before his consent was offered. This portion of the incident and allegations were captured in officers’ BWC footage, as discussed below.

Police Officer McQuail’s BWC footage (Board Review 06) at timestamp 1:36 shows the individual rev his moped and begin to drive away down the sidewalk. The stop then proceeds as discussed above. The individual says, “I’ll let you search me, but I ain’t got shit,” (timestamp 2:13). Police Officer McQuail says, “Alright that’s fine, then I’m going to. You just told me I could.” The individual then says that Police Officer McQuail does not have to and that he (the individual) has nothing.

Sergeant Marrero’s BWC footage (Board Review 04) at timestamp 0:51 shows Sergeant Marrero initially telling the unidentified individual to leave unless he wants “something to do with it.” At timestamp 1:14, the individual gets on the moped and begins to drive down the sidewalk. The stop then proceeds as discussed above.

Police Officer McQuail and Sergeant Marrero were consistent in their testimonies that they believed the civilian’s consent to search him was freely given.

Sergeant Marrero testified that when he arrived on the scene, the individual was approximately 10-15 feet from § 87(2)(b). Sergeant Marrero had a brief interaction with the individual during which the individual said that he was doing nothing and that he did not have to provide his name. The individual was free to leave, though the individual seemed nervous and moved around a lot. When the individual got onto his moped, Police Officer McQuail stopped him, and he was no longer free to leave. Sergeant Marrero did not know why Police Officer McQuail stopped the individual or what had raised his suspicions regarding the individual. After Police Officer McQuail stopped the individual, it raised Sergeant Marrero’s suspicion that the individual might have a firearm in the moped. Sergeant Marrero suspected that the firearms the officers were seeking might have been in the scooter seat because of the individual’s close proximity to § 87(2)(b) and because of “solid intel” from that day and from the past that § 87(2)(b) carries guns § 87(2)(b).

There was no other reason why he believed that the firearm was there. Sergeant Marrero did not articulate any changes in the circumstances that led to the individual no longer being free to leave after he was previously

considered free to leave. The officers did not know whether the moped belonged to § 87(2)(b) or the individual. When he arrived at the scene, the moped was “on its own,” and the individual was not near or on it. Sergeant Marrero did not recall seeing § 87(2)(b) touch the moped at any point and did not recall how close the moped was to § 87(2)(b) when he saw it.

New York State Vehicle and Traffic Law (VTL) Section 1225 prohibits motor vehicles from driving on or across a sidewalk except when reasonable and necessary to gain access to a public highway, private way, or lands and buildings adjacent to the highway or way, in conducting work in one of those places, or to plow snow or perform another public service (Board Review 21).

New York State VTL Section 1282 7(a) prohibits the operation of electric scooters on sidewalks (Board Review 20).

Whren v. United States, 517 U.S. 806 (1996), holds that if a police officer has probable cause to detain a person temporarily for a traffic violation, the seizure does not violate the Fourth Amendment (which protects against unreasonable searches and seizures), even if the underlying reason for the stop might have been to investigate another matter (Board Review 22).

As noted above, it was undisputed that the individual rode his moped on the sidewalk in the moments before officers stop him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

United States v. Buckner, 473 F.3d 551 (2007), states that valid consent to seize and search items provides an exception to the usual warrant requirement. Consent must be knowing and voluntary (Board Review 23).

§ 87(2)(g)

§ 87(2)(g)

When Police Officer McQuail told the individual that he was going to search him, because the individual told him he could, the individual did not withdraw consent. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

People v. Hernandez, 238 A.D.2d 131 (1997), states that there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of the vehicle (Board Review 24).

Ybarra v. Illinois, 444 US 85 (1979), states that a person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person; where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person, and this requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be (Board Review 33).

As noted above, Sergeant Marrero’s only reasons for believing that a firearm was in the moped

were the proximity of § 87(2)(b) and the individual, and “intel” the officers had from that day and from the past that § 87(2)(b) carries guns. His suspicion that the individual might have a firearm in the moped was only raised when Police Officer McQuail stopped the individual. Per Ybarra v. Illinois (1979), a person’s proximity to others independently suspected of criminal activity does not give rise to probable cause to search that person. As Sergeant Marrero did not recall seeing § 87(2)(b) touch the moped, § 87(2)(g) As Sergeant Marrero was unable to articulate any additional reasons why he believed there was a firearm in the moped driven by the unidentified individual, § 87(2)(g)

Allegation (E) Abuse of Authority: Detective Jonathan Trahan strip-searched § 87(2)(b)

As noted above, it is undisputed that § 87(2)(b) was considered under arrest for multiple counts of criminal possession of a controlled substance (Board Review 01) after the search warrant execution (Board Review 19) in his apartment found heroin, crack cocaine, and other drugs, as well as § 87(2)(b) identification.

§ 87(2)(b) testified that Detective Trahan removed § 87(2)(b) belt, undid his pants, and then pulled down § 87(2)(b) pants and underwear, initially to his waistline, then to the point of exposing his genitals. His pants were down for approximately one minute. Once § 87(2)(b) pants were below his waist, Detective Trahan reached his hands into § 87(2)(b) pants. Detective Trahan placed his hand under § 87(2)(b) scrotum and touched the inside of his thigh, then reached further and touched the inside of § 87(2)(b) buttocks, and then felt down the inside of § 87(2)(b) thighs. Detective Trahan pulled a plastic bag of crack cocaine out of § 87(2)(b) pants. § 87(2)(b) denied that he had had anything, including crack cocaine, on him and stated that the crack cocaine did not belong to § 87(2)(b)

Detective Trahan and Sergeant Marrero were consistent in their testimonies that § 87(2)(b) was not strip searched. It was undisputed by officers that they were seeking guns, which were not found during the search warrant execution at § 87(2)(b) apartment (Board Review 19).

Detective Trahan testified that he felt a round, solid object in § 87(2)(b) waistband. Detective Trahan conducted “a normal field search...for narcotics.” He did not consider his search invasive, as it did not involve checking any of § 87(2)(b) orifices. The field search was conducted for the safety of officers and § 87(2)(b). Detective Trahan pulled § 87(2)(b) clothes out “enough for me to be able to look down,” held a flashlight, and shone the flashlight down. While § 87(2)(b) genitals were made visible to Detective Trahan, they were not exposed to anyone else or to the general area. Detective Trahan did not remove § 87(2)(b) clothes or pull them down. Detective Trahan believed that § 87(2)(b) could have had a weapon in his front waistband area for the following reasons: § 87(2)(b) history § 87(2)(b) had a weapon in his possession when Detective Trahan arrested him on a previous occurrence; on another occasion in approximately 2014, § 87(2)(b) was involved in a shooting with police; the officers were seeking firearms in connection with the search warrant and had come to the scene to arrest § 87(2)(b) following the execution of the search warrant; the thing that Detective Trahan felt when frisking § 87(2)(b) and his knowledge and experience of where people hide weapons. There was no other reason. From § 87(2)(b) waistband, Detective Trahan retrieved “capsules of drugs.” He did not recall the shape of the object but believed that it was “probably...like a cellphone length, and probably thicker as in round,” and approximately the size of Detective Trahan’s fist or half of his fist. He did not specify the type of drugs found.

Sergeant Marrero testified that he did not recall seeing Detective Trahan's search of § 87(2)(b). He heard Detective Trahan say that there was an object or something "in there," then Detective Trahan reached into the front of § 87(2)(b) pants and removed the item. Sergeant Marrero did not know how many layers of clothing Detective Trahan reached under. Sergeant Marrero was engaged with the other individual during this time. Sergeant Marrero never witnessed Detective Trahan reaching into the front of § 87(2)(b) pants and drawing them away from his body and never became aware of this happening. Sergeant Marrero denied that officers conducted a strip search.

Detective Trahan's BWC recording (Board Review 05) shows that, at timestamp 5:19, Detective Trahan lifts § 87(2)(b) shirt briefly and seems to draw his belt out slightly. He then lifts § 87(2)(b) shirt again, and § 87(2)(b) says that he does not have to strip search him. At timestamp 5:22, Detective Trahan tells § 87(2)(b) that he is not strip searching him and is "taking a look." He holds his flashlight in his right hand, aimed down § 87(2)(b) pants, then reaches with his left hand into the waistband of what appears to be § 87(2)(b) underpants. He pulls the waistband out several inches and points the flashlight into § 87(2)(b) pants. § 87(2)(b) again says that Detective Trahan is strip searching him. Detective Trahan and § 87(2)(b) are standing on the sidewalk where § 87(2)(b) was found, and there are other officers nearby. Detective Trahan recovers a white package of some sort from § 87(2)(b) pants at timestamp 5:28. It is visible inside the waistband of what appears to be § 87(2)(b) underpants. The package is more fully visible at timestamp 5:47 after Detective Trahan removes it from § 87(2)(b) underpants.

Sergeant Marrero's BWC recording (Board Review 04) captures, at timestamp 4:56, § 87(2)(b) complaining that Detective Trahan is strip searching him. Sergeant Marrero is standing next to Detective Trahan, in front of § 87(2)(b). As Detective Trahan reaches into § 87(2)(b) waistband and begins to pull it out at timestamp 5:02, Sergeant Marrero turns and begins to walk down the sidewalk a few paces. His camera picks up the audio of Detective Trahan apparently finding narcotics in § 87(2)(b) waistband at timestamp 5:06.

Police Officer McQuail's memo book (Board Review 34) notes that a "quantity [of] crack cocaine" was found in § 87(2)(b) underwear. Brass knuckles were also recovered from § 87(2)(b).

Patrol Guide Procedure 208-05 (Board Review 25) defines a strip search as any search in which an individual's undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas. A strip search of a prisoner may not be conducted routinely in connection with an arrest. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. A strip search must be documented in the command log, in the arresting officer's activity log, and in arrest paperwork. A strip search must be conducted in a secure area, in utmost privacy, in the presence of only the members of service reasonably necessary to conduct the search. There are no noted exceptions to these criteria.

§ 87(2)(g)

However, based on BWC footage and on Detective Trahan's account of events, the investigation credited that Detective Trahan drew § 87(2)(b) pants and undergarments away from his body, making his genitals visible in the process, which PG Procedure 208-05 defines as a strip search. As this strip search was conducted in a public place, with numerous officers around, and was then not documented properly, § 87(2)(g)

§ 87(2)(g)

Allegation (F) Discourtesy: Detective Jonathan Trahan spoke discourteously to § 87(2)(b)

It is undisputed that, during the course of his interaction with § 87(2)(b) Detective Trahan said, “Oh, you see? You see? Why the fuck you lying? I tried treating you like a man; you think I don’t know what I’m looking for?”

Detective Trahan testified that his conversation with § 87(2)(b) was not aggressive or disrespectful. Their conversation involved “street banter.” Detective Trahan “may have” used profanity while speaking to § 87(2)(b) though it was not “directed at” § 87(2)(b) or said disrespectfully but was “how we talk.” The language he used was “street vernacular,” and was used to relate to § 87(2)(b) and make him understand. There was no other reason why Detective Trahan used the word “fuck” in this context.

Patrol Guide Procedure 200-02 states that members of the service are to maintain a higher standard of integrity than is generally expected of others, and to value human life, respect the dignity of each individual, and render services with courtesy and civility (Board Review 26).

DAO-DCT Case #2018-18951 establishes that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct (Board Review 27).

DAO-DCT Case #2015-15012 notes that in a dynamic situation over which an officer is attempting to gain control, an officer can be excused for using discourteous language that would otherwise be inappropriate. However, language that serves no legitimate purpose but to belittle a civilian does not fall under this exception and is inappropriate (Board Review 28).

§ 87(2)(g)

§ 87(2)(b)

was already in handcuffs, and officers outnumbered the civilians present. Detective Trahan was therefore not attempting to gain control of a dynamic situation at the time,

§ 87(2)(g)

Allegation (G) Abuse of Authority: Detective Jonathan Trahan searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (H) Abuse of Authority: Sergeant Darwin Marrero searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was considered under arrest for multiple counts of criminal possession of a controlled substance (Board Review 01) after officers executed a search warrant (Board Review 19) in his apartment and found heroin, crack cocaine, and other drugs, as well as § 87(2)(b) identification. The search warrant allowed officers to seek, among other things, heroin, cocaine, and firearms. A vehicle was not named in the search warrant.

§ 87(2)(b) testified that before his arrest, he was turning off the headlights or locking the door of a car he drove to the location. § 87(2)(b) borrowed the car from a friend whose legal name he did not know. § 87(2)(b) saw a marked NYPD vehicle drive past him. § 87(2)(b) went to sit on a bench, and the marked vehicle returned less than five minutes later. Officers got out and placed him under arrest. When § 87(2)(b) asked why they were arresting him, he was told that they would talk to him about it once they reached the stationhouse. § 87(2)(b) did not specify why he was arrested.

Officers found the car key on § 87(2)(b). As § 87(2)(b) was being placed in a police vehicle and removed to the 25th Precinct stationhouse, officers used the key to unlock the car. Detective Trahan began searching the car.

Both Detective Trahan and Police Officer McQuail testified that § 87(2)(b) had a history of violence towards police, including exchanging gunfire with police. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Detective Trahan testified that approximately six to eight months before this incident, he arrested § 87(2)(b) and § 87(2)(b) was in possession of a weapon at the time. On the incident date, at an unspecified point after officers began executing the search warrant, Police Officer Franzitta and Police Officer Renz told Detective Trahan (before Detective Trahan got to where they were) that § 87(2)(b) was in a car that the officers were approaching. As Police Officer Franzitta and Police Officer Renz approached, § 87(2)(b) appeared to see the officers, then got out of the car and went to sit on a bench approximately twenty feet from the car, as if “trying to...remove the car from himself.” The vehicle § 87(2)(b) exited was ultimately searched due to § 87(2)(b) actions, which include § 87(2)(b) possession of the keys on his person, his exiting of the vehicle upon seeing police (which made officers think that § 87(2)(b) may have left or placed the firearms the officers were seeking in the vehicle), and the fact that § 87(2)(b) moved away from the vehicle as the officers (likely Police Officer Franzitta and Police Officer Renz) approached despite (as Detective Trahan believed) not apparently knowing that they had executed a search warrant at his house. It was ultimately Sergeant Marrero’s decision to search the vehicle.

Detective Trahan’s BWC recording (Board Review 05) shows Detective Trahan approaching the vehicle identified as the one in which § 87(2)(b) arrived at approximately timestamp 8:10. The vehicle appears to be legally parked. At 8:15, an officer (who appears to be Police Officer Franzitta, one of the first officers to the scene) tells Detective Trahan that he saw § 87(2)(b) in the car “before.” Detective Trahan looks through the windows with his flashlight. At 8:26, Detective Trahan opens the front passenger’s side door and begins searching the car. At 9:02, as Detective Trahan is searching the car, Sergeant Marrero is visible on the sidewalk next to the car. Sergeant Marrero is more clearly visible at timestamp 10:17. Sergeant Marrero does not appear to intervene in Detective Trahan’s search of the vehicle.

Sergeant Marrero did not recall the search of the vehicle § 87(2)(b) arrived in or recalled being involved in the search. Sergeant Marrero was not aware of officers searching a car parked by the side of the road. There was a vehicle “in question,” but Sergeant Marrero did not recall how far away it was, what it looked like, or whether the vehicle was connected to § 87(2)(b). When shown footage of the vehicle from Detective Trahan’s BWC at 8:07, Sergeant Marrero did not recognize the light-colored SUV shown and did not recall officers searching the vehicle.

Sergeant Marrero’s BWC recording (Board Review 04) shows that, at timestamp 3:01, Sergeant Marrero asks § 87(2)(b) where his car is, and § 87(2)(b) says that it is “in the shop.” At 3:29, Sergeant Marrero again asks § 87(2)(b) about his car, and § 87(2)(b) again says that his car is in the shop. When Sergeant Marrero asks if § 87(2)(b) car is not parked nearby, § 87(2)(b) again says that it is in the shop. At timestamp 6:24, Sergeant Marrero again asks § 87(2)(b) for his car, and § 87(2)(b) again says that his vehicle is in the shop. Sergeant Marrero asks how § 87(2)(b) has

his keys if his car is in the shop. § 87(2)(b) says that they are old keys. § 87(2)(b) is never captured acknowledging to officers that he has a car at or near the scene. Sergeant Marrero turns off his camera apparently before the vehicle search occurs.

Police Officer McQuail did not recall the search of the vehicle § 87(2)(b) arrived in or recall being involved in the search. Police Officer McQuail did not mention discussing a vehicle with ADA § 87(2)(b). Police Officer McQuail stated that, per his review of his BWC footage, the majority of his time at the scene was spent searching the area, including checking benches, bushes, under cars, in wheel wells of cars, and around covered cars.

Police Officer McQuail's BWC footage (Board Review 06) shows him searching the area around where § 87(2)(b) was apprehended at approximately the time that Detective Trahan is searching § 87(2)(b) vehicle; this is at approximately 01:42 in the internal timestamp of the videos. The footage does not capture him finding anything during his search. Police Officer McQuail eventually turns his camera off.

As Police Officer Renz's BWC footage (Board Review 03) begins, Police Officer Renz is in the front driver's seat of a moving vehicle. At timestamp 0:48, Police Officer Renz stops next to a park, and he and Police Officer Franzitta exit the vehicle and approach § 87(2)(b) who is seated on a bench. Police Officer Renz reaches § 87(2)(b) at approximately timestamp 0:57. The officers immediately take § 87(2)(b) arms and place him in handcuffs. At timestamp 1:33 and again at timestamp 1:53, Police Officer Renz calls over his radio for the 25th Precinct FIO unit. He provides their location and says, "We got him in cuffs." At timestamp 2:57, a male voice over the radio says, "Joe, you have the car?" This is likely addressing Police Officer Joseph Franzitta. At 3:06, another voice over the radio addresses Police Officer Renz and Police Officer Franzitta by their radio unit and asks if they have the car. Police Officer Renz says, "Negative." Police Officer Renz and Police Officer Franzitta remain with § 87(2)(b) by the bench. They are still with § 87(2)(b) who is apparently in handcuffs, when Police Officer McQuail is visible there at timestamp 3:45.

No other officer's BWC captures a search of the vehicle.

Detective Trahan was the only officer who acknowledged searching the vehicle and stated that he did so under Sergeant Marrero's instruction. Sergeant Marrero did not recall observing the vehicle search, but BWC captures him asking § 87(2)(b) about "his car" and he is seen present while Detective Trahan searched the vehicle. As such, Allegations G and H were pleaded against Detective Trahan and Sergeant Marrero.

People v. Hernandez, 238 A.D.2d 131 (1997), states that there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of the vehicle (Board Review 24).

Arizona v. Gant, 556 U.S. 332 (2009), states that an officer is permitted to search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search, or when it is reasonable to believe the vehicle contains evidence of the offense of arrest. If there is probable cause to believe a vehicle contains evidence of criminal activity, a search of any area of the vehicle in which the evidence might be found is authorized (Board Review 29).

People v. Blasich, 73 NY2d 673 (1989) states that the proper inquiry in assessing the propriety of a search conducted pursuant to the automobile exception to the warrant requirement of the New York Constitution is whether the circumstances gave the police officer probable cause to search the

vehicle (Board Review 35). In this case, an individual was in his vehicle, driving aimlessly around an airport parking lot without parking. He was observed by officers. Later, when the individual failed to pay a parking fee, officers approached and observed burglar's tools on the floor of the car.

People v. Galak, 81 NY2d 463 (1993) states that under the "automobile exception," the police must not only have probable cause to search a vehicle, but there must also be a nexus between the arrest and the probable cause to search (Board Review 36).

As noted above, officers executed a search warrant in § 87(2)(b) apartment and found heroin, cocaine, and other drugs, in addition to § 87(2)(b) ID. The search warrant did not mention or include a vehicle. Officers then found § 87(2)(b) approximately one hour later and approximately two blocks away from his apartment, and § 87(2)(b) was subsequently arrested. It is undisputed that prior to his arrest, § 87(2)(b) was either in or near the vehicle that was ultimately searched. However, at the time of his apprehension, § 87(2)(b) was sitting on a bench. § 87(2)(g)

Officers never reportedly observed § 87(2)(b) using the vehicle in the commission of a crime or even loading or unloading anything from the vehicle. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- Police Officer McQuail has been a member of service for six years and has been a subject in three additional CCRB complaints and six additional allegations, of which two were substantiated:
 - 202105864 involved substantiated allegations of force (physical force) and a threat of force (verbal or physical) against Police Officer McQuail. The Board recommended Charges, and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- Sergeant Marrero has been a member of service for fourteen years and has been a subject in four additional CCRB complaints and nine additional allegations, none of which were substantiated. § 87(2)(g)
- Detective Trahan has been a member of service for nine years and has been a subject in four additional CCRB complaints and four additional allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of October 31, 2022, the New York City Office of the Comptroller had no record of a Notice of Claim being filed regarding this incident (Board Review 31).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad: 4

Investigator:	<u>Rachel Murgu</u>	<u>SI Rachel Murgu</u>	<u>23 February 2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>2/24/2023</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date